

**DECISION**



12929 PL-II  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-195957

**DATE:** February 25, 1980

**MATTER OF:** General Exhibits, Inc. CNG-01580

**DIGEST:**

1. Agency was not prohibited from awarding contract in excess of \$500,000 where written solicitation contained no award ceiling amount. Protester relied at its own risk on oral advice or out-dated information from previous solicitation that award ceiling existed.
2. Where solicitation evaluation criteria placed emphasis on technical considerations, and protester's low cost proposal was found to be, at best, marginally technically acceptable, GAO has no reason to question contracting officer's determination to award to higher priced, technically superior offeror. Moreover, protester has failed to substantiate contention that awardee's technical proposal was deficient and had less technical merit than its own.
3. Allegation, first raised after closing date for receipt of proposals, that negotiated procurement should have been formally advertised is untimely filed protest issue and not for consideration under Bid Protest Procedures.
4. With nothing more than protester's unsubstantiated allegations regarding qualifications of agency technical evaluators, GAO has no basis to examine or question these qualifications.

General Exhibits, Inc. (General), protests the award of a contract to Design and Production, Inc. (D&P) under solicitation No. 10-S0161, issued by the Department of

DL-503770  
AGC00076

[Protest Against Contract  
Award]

008752  
111643

the Interior, Bureau of Reclamation (Bureau), for the fabrication and installation of an exhibit for the Visitor Arrival Center at Grand Coulee Dam, Washington. General alleges that it was misled by the agency, and that under the applicable evaluation criteria it was entitled to award. We find the protest to be without merit.

The contract was awarded to D&P in the amount of \$570,911. General, which proposed \$481,295, maintains that it was advised by the Bureau that no award would be made in excess of \$500,000. It alleges that it therefore developed its technical proposal with a \$500,000 ceiling in mind and consequently was placed at a competitive disadvantage when the Bureau decided to consider a contract amount in excess of that ceiling.

The record shows that a previous solicitation for the design of the Grand Coulee exhibit did, in fact, contain a provision which indicated that the estimated price for the future fabrication project would be \$500,000. However, at the time of the issuance of the design solicitation, the Bureau's plans were to complete the design phase in the fall of 1978 and award the fabrication contract in the early spring of 1979. Subsequent problems caused a delay of approximately one year from the schedule originally anticipated. This inflationary delay, reports the Bureau, coupled with other changes, caused it to revise upward the fabrication estimate. Therefore, the Bureau placed no \$500,000 ceiling or estimate in the instant solicitation for fabrication, and the Commerce Business Daily announcement of this procurement referred to an estimated cost of between \$400,000 and \$600,000.

Since there was no \$500,000 ceiling indicated in the written solicitation for this procurement, we find nothing improper in the Bureau's award of a contract in excess of that amount. To the extent that General may have relied on oral advice or outdated information in a previous solicitation which may have placed it at a competitive disadvantage, it did so at its own risk. For-Flo Industries, Inc., B-192687, June 5, 1979, 79-1 CFB 336.

General also contends that it, rather than D&P, was entitled to award because 1) its proposal was technically acceptable, 2) it offered a price lower than D&P's, and 3) cost was the most important evaluation factor, worth 40 of 100 evaluation points.

The Bureau explains that while the 40 point cost factor was the most important single factor in the evaluation scheme, three technical factors taken collectively equaled 60 points, so that combined technical considerations were more important than cost. The Bureau further states that General's technical proposal was found to be only marginally acceptable after initial technical review and was placed in the competitive range to allow General the opportunity to clarify technical deficiencies in its proposal. At the conclusion of negotiations, the Bureau found that General had worsened its technical position in relation to other proposers. In this regard, the Bureau states that General's "key assumption of [its] technical acceptability is erroneous; only the possibility, never realized, of achieving technical acceptability existed."

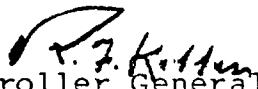
Since General's proposal was considered to be technically inferior to at least three competing proposals, and since combined technical considerations outweighed cost in the overall evaluation, award to a higher priced but technically superior firm was in fact consistent with the evaluation criteria. Although General claims that the successful offeror's technical proposal was deficient in many respects and clearly has less technical merit than General's proposal, it has not substantiated that claim. Consequently, we find no basis to object to the award.

Finally, General, in its comments on the agency report, suggests that this procurement should have been formally advertised instead of being negotiated, and that the evaluators were not properly qualified to evaluate the proposals. This first issue is untimely. A protest concerning an alleged defect which is apparent on the face of the solicitation must be filed

• prior to bid opening date or date set for receipt of proposals. 4 C.F.R. 20.2(b)(1) (1979). Thus, General should have raised this issue prior to the closing date, rather than after evaluation and award.

With respect to the second point, as a general rule we will not become involved in appraising the qualifications of contracting agency personnel. See Ads Audio Visual Productions, Inc., B-190760, March 15, 1978, 78-1 CPD 206; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. Further, we have held that the important and responsible positions held by agency evaluators constitute a prima facie showing that they are qualified and, as here, with nothing more than a protester's unsubstantiated allegations regarding the evaluators' qualifications, we have no basis to examine or question these qualifications. Ads Audio Visual Productions, Inc., supra.

The protest is denied.

  
Deputy Comptroller General  
of the United States